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10/591,848

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EXAMINER

KIRSCH, ANDREW THOMAS

ART UNIT

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/591,848	<b>Applicant(s)</b> NIWA ET AL.	
	<b>Examiner</b> ANDREW T. KIRSCH	<b>Art Unit</b> 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/5/2006</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Specification***

1. The abstract is objected to because of the following informalities: It exceeds the maximum length of 150 words. Correction is required. See MPEP § 608.01(b).

### ***Claim Objections***

2. Claim 1 is objected to because of the following informalities: awkward grammar used in lines 9-10 "end portions of the separated band is connected," and at line 16 "the connection piece is snapped is rotated together with the cap body," and line 17 contains the clause "and on the other hand," with no previous mention of an acceptable preceding statement such as "on the one hand". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

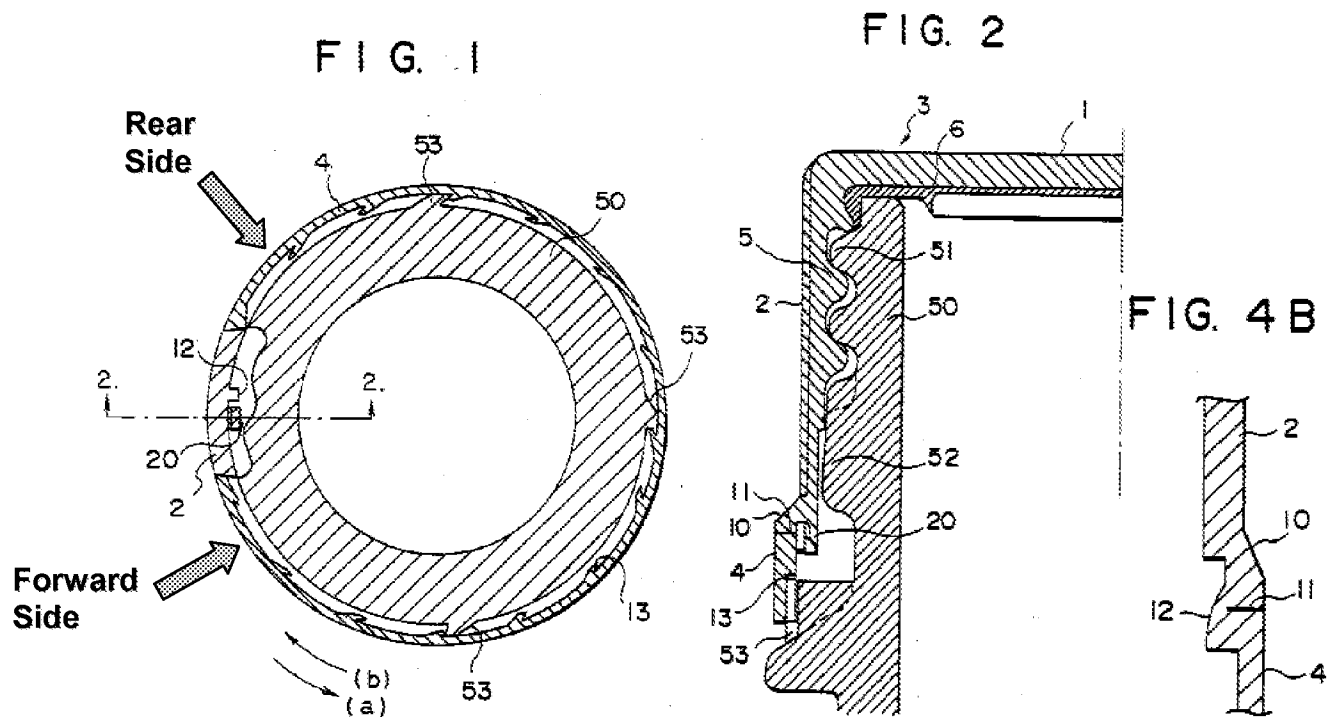
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-6, 8, 9, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,573,128 (Tsujiuchi et al. hereinafter).
5. In re claim 1, with reference to Figs. 1, 2, and 4B below, Tsujiuchi et al. discloses: An open/close cap which is screwed to a mouth portion of a pouring spout (50) of a packaging container and adapted to open the mouth portion, the open/close

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cap comprising a cap body (3) screwed to an outer peripheral surface of the mouth portion and a band (4) attached to the cap body so as to extend in a circumferential direction thereof so as to be engaged with the pouring spout, wherein the band (4) is provided with at least one portion (12) for separating the band in the circumferential direction (direction normal to Fig. 1), end portions of the separated band is connected to each other by a connection piece (band is one piece, so inherently connected), which is to be cut off, at that one portion, a protruded portion (13) is formed to an inside of the band (4) so as to project toward the pouring spout (50), when the open/close cap (3) is rotated in an opening direction with respect to the pouring spout (50), a forward side (see Fig. 1) of the band between which the connection piece is snapped is rotated together with the cap body (3), and on the other hand, a rear side (see Fig. 1) of the band is prevented from rotating by engagement of the protruded portion (13) with a portion of the pouring spout (53), the connection pieces (12) are cut off by a stress of the band (4) generated by the engagement, and the band (4) is positioned below the lower surface (surface at line 11) of the cap body so as to be attached to the lower portion (10) of the cap body (3) by a coupling piece (12).



**Figs. 1, 2, and 4B of U.S. Patent No. 5,573,128 (Tsujiguchi et al. hereinafter)**

6. In re claim 2, with reference to Fig. 4B above, Tsujiguchi et al. discloses the claimed invention including wherein the coupling piece (12) connects the inner surface side of the band (4) and the lower surface of the cap body (3).

7. In re claim 3, with reference to Fig. 4B above, Tsujiguchi et al. discloses the claimed invention including wherein a contact preventing portion (10) having a diameter equal to at least an outer surface of the band (4) is provided for the outer peripheral surface of the cap body (3) so as to extend outward from the outer peripheral surface ("peripheral surface" interpreted as that of the cap body).

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8. In re claim 4, with reference to the Figs. above, Tsujiguchi et al. discloses the claimed invention including wherein the contact preventing portion (10) is formed by extending at least a lower portion (10) in a vertical direction of the cap body (3).

9. In re claim 5, with reference to Fig. 2 above, Tsujiguchi et al. discloses the claimed invention including wherein a band shape maintaining member (13) for preventing crushing of the band in a radially inward direction through abutment of the inside portion of the band is disposed to the lower end of the cap body (3) in an inside portion of the band (4).

10. It has been held that a recitation with respect to the manner in which a claimed feature ("band shape maintaining member") is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

11. In re claim 6, with reference to the Figs. above, Tsujiguchi et al. discloses the claimed invention including wherein the band shape maintaining member (13) is composed of a plurality of projections (see Fig. 1) intermittently disposed to the lower end surface of the cap body (3) in a circumferential direction thereof.

12. In re claim 8, with reference to the Figs. above, Tsujiguchi et al. discloses the claimed invention including wherein the cap body (3), the band shape maintaining member (13), the band (4), the connection piece and the coupling piece are integrally formed by an injection molding process (column 6, lines 11-31).

13. In re claim 9, with reference to the Figs. above, Tsujiguchi et al. discloses the claimed invention including wherein a contact preventing portion (10) having a diameter

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equal to at least an outer surface of the band (4) is provided for the outer peripheral surface of the cap body (3) so as to extend outward from the outer peripheral surface ("peripheral surface" interpreted as that of the cap body).

14. In re claim 11, with reference to the Figs. above, Tsujiguchi et al. discloses the claimed invention including wherein a contact preventing portion (10) having a diameter equal to at least an outer surface of the band (4) is provided for the outer peripheral surface of the cap body (3) so as to extend outward from the outer peripheral surface ("peripheral surface" interpreted as that of the cap body).

### ***Claim Rejections - 35 USC § 103***

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

17. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

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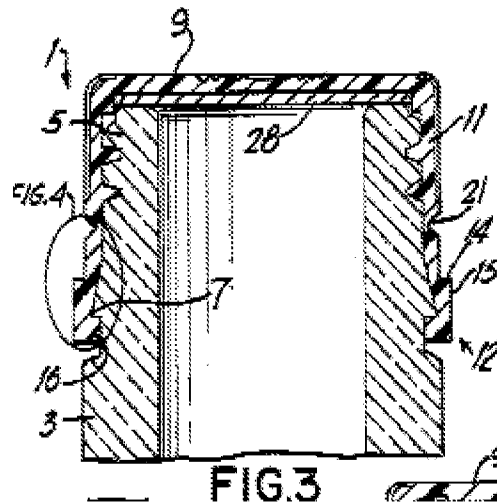
the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

18. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tsujiguchi et al. as applied to claim 5 above, and further in view of U.S. Patent No. 4,343,408 (Csaszar hereinafter).

19. In re claim 7, with reference to the Figs. above, Tsujiguchi et al. discloses the claimed invention except wherein the band shape maintaining member is an annular member projected from the lower end of the cap body.

20. However, with reference to Fig. 3 below, Csaszar discloses a sealing cap with a frangible ring in which a band shape maintaining member (16) is an annular member (column 4, line 64) projected from the lower end of a cap body (note that the band is considered as the lower end of the cap body).





**Fig. 3 of U.S. Patent No. 4,343,408 (Csaszar hereinafter)**

21. Therefore, it would have been obvious to have modified the band shape maintaining member of Tsujiguchi et al. to be annular in shape (a continuous ring) as taught by Csaszar. Such a modification would have been obvious for the purposes of increasing the lateral rigidity of the band as well as blocking pilfer attempts as was known in the art at the time of the invention.

22. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tsujiguchi et al. in view of U.S. Patent No. 5,415,307 (Kneer hereinafter).

23. In re claim 10, with reference to the Figs. above, Tsujiguchi et al. discloses a structure formable by the claimed method of manufacturing an open/close cap which comprises a cap body screwed to an outer peripheral surface of a pouring spout of a packaging container so as to open or close the pouring spout, a band disposed so as to extend in the circumferential direction of the cap body and coupled to the cap body

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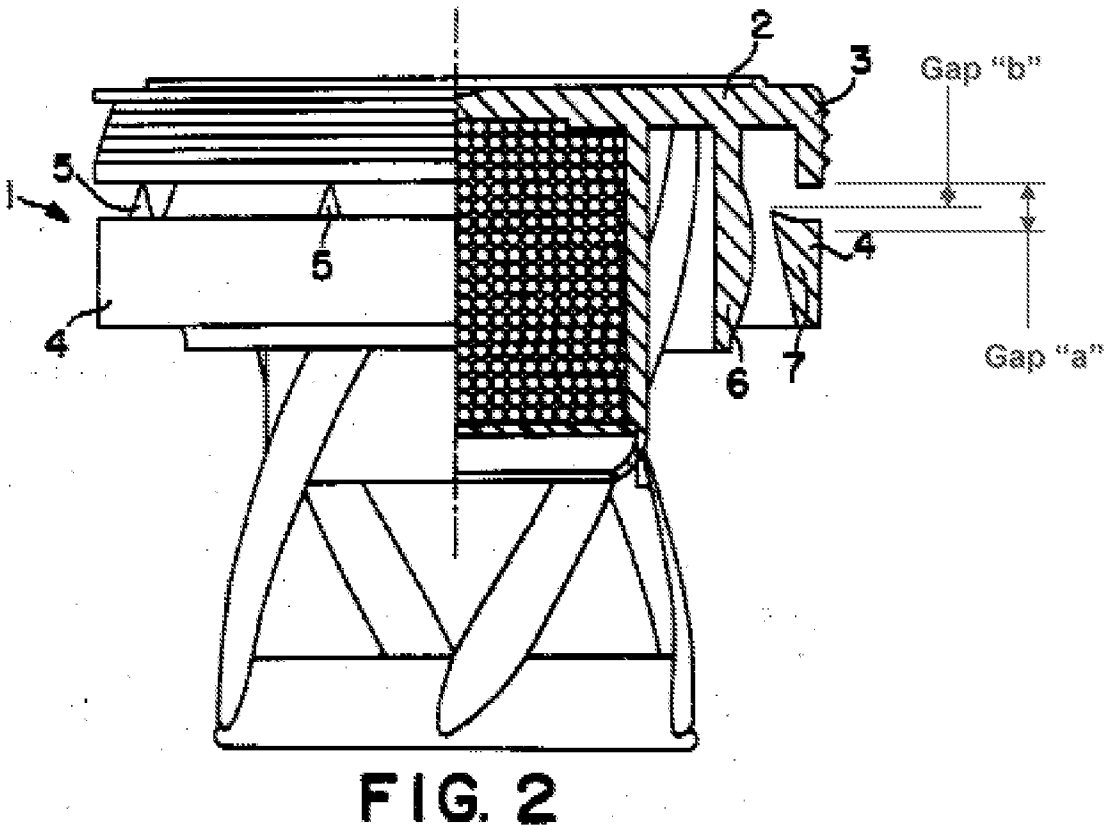
through a coupling piece, and a band shape maintaining member disposed to a lower portion of the cap body for preventing crushing of the band in a radially inward direction through abutment of the inside portion of the band, and in which the band is provided, in a circumferential direction thereof, with at least one portion at which the band is separated in the circumferential direction, and at which end portions of the band are connected to each other by a connection piece, and the connection piece is cut off by a stress caused at a time when the open/close cap is rotated with respect to the pouring spout and a protruded portion projecting toward the pouring spout from the inside of the band rides over a portion of the pouring spout, the manufacturing method including an injection molding step for integrally molding the cap body, the band shape maintaining member, the connection piece and the coupling piece, wherein in the injection molding step, and also including a pushing step for pushing the band toward the cap body, after the injection of the injection molding step, so that the band is positioned on the outer periphery side of the band shape maintaining member.

24. Tsujiguchi et al. fails to disclose wherein the band is connected to the cap body by the coupling piece so that a gap between the upper end of the band and the lower end of the cap body is formed to be larger than a dimension between the lower end of the band shape maintaining member and the lower end of the cap body.

25. However, with reference to Fig. 2 below, Kneer discloses a cap body with a frangible member in which a band (4) is connected to a cap body by a coupling piece (5) so that a gap (gap "a") between the upper end of the band (4) and the lower end of

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the cap body is formed to be larger than a dimension (gap “b”) between the lower end of a band shape maintaining member (7) and the lower end of the cap body (see Fig. 2).



**Fig. 2 of U.S. Patent No. 5,415,307 (Kneer hereinafter)**

26. Therefore, it would have been obvious to have modified the gap relationship between the band, cap body, and band shape maintaining member as stated with the relationship conveyed in Kneer for the purposes of simplifying the mold process by eliminating the secondary cutting operation called for in Tsujiguchi et al.

27. Under the principles of inherency, if a prior art device, in its normal and usual operation, would necessarily perform the method claimed, then the method claimed will be considered to be anticipated by the prior art device. When the prior art device is the

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same as a device described in the specification for carrying out the claimed method, it can be assumed the device will inherently perform the claimed process. *In re King*, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986)

### ***Conclusion***

28. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 5,056,675 to Julian discloses a tether web ratchet drive tamper indicating band closure. U.S. Patent No. 5,715,959 to Pfefferkorn et al. discloses a closure cap with an anti-tampering ring which is coupled to itself.

Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW T. KIRSCH whose telephone number is

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(571)270-5723. The examiner can normally be reached on M-F, 8am-5pm, Off alt. Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrew T. Kirsch/

Examiner, Art Unit 3781

/Anthony D Stashick/  
Anthony D Stashick  
Supervisory Patent Examiner, Art Unit 3781